

JUN 15 2009

**FEDERAL ELECTION COMMISSION**  
999 E Street, N W  
Washington, D C 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR 6154  
DATE COMPLAINT FILED 12/30/08  
DATE OF NOTIFICATION 1/07/09 and  
5/28/09  
LAST RESPONSE RECEIVED 3/19/09  
DATE ACTIVATED 4/1/09

STATUTE OF LIMITATIONS  
prospective complaint

**COMPLAINANT:**

Denise Cardinal/Alhance for a Better  
Minnesota

**RESPONDENTS:**

Coleman for Senate '08 and Rodney Axtell,  
in his official capacity as treasurer<sup>1</sup>  
Norm Coleman

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U S C § 439a  
11 C F R § 113 1(g)(1)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that former Minnesota U S Senator Norm Coleman and  
his principal campaign committee, Coleman for Senate '08 and Rodney Axtell, in his  
official capacity as treasurer, ("the Committee") (collectively, "Respondents") are  
improperly using campaign funds for personal use to pay for Coleman's legal fees

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<sup>1</sup> Norm Coleman for U S Senate was initially notified of this complaint, and that committee responded on March 19, 2009. However, according to filings with the Commission, Norm Coleman for U S Senate terminated on June 14, 2005. Norm Coleman's principal campaign committee for the 2008 election cycle was Coleman for Senate '08, a committee that filed a Statement of Organization on March 14, 2003. We subsequently notified Coleman for Senate '08 on May 28, 2009. In response, Coleman for Senate '08 adopted the response of Norm Coleman for U S Senate.

1     stemming from a civil suit in Texas and a shareholders' derivative suit in Delaware ("the  
2     Kazeminy lawsuits") that allege that financier Nasser Kazeminy funneled gifts totaling  
3     \$75,000 to Coleman through Kazeminy's company and the employer of Coleman's  
4     wife

5             In response, Coleman and the Committee, in separate but nearly identical  
6     responses, assert that the Commission should dismiss the complaint because, contrary to  
7     the allegations, Respondents have not yet paid any of the legal fees arising from the need  
8     to monitor and respond to the Kazeminy lawsuits. Respondents emphasize that they are  
9     seeking an Advisory Opinion from the Commission as to whether they can spend  
10    campaign funds on these legal fees before paying any of the fees with campaign funds

11            Based upon the complaint, the responses, and other available information, we  
12    recommend that the Commission find no reason to believe that Norm Coleman, Coleman  
13    for Senate '08, and Rodney Axtell, in his official capacity as treasurer, converted  
14    campaign funds to personal use in violation of 2 U.S.C. § 439a(b)

15    **II.     FACTUAL AND LEGAL ANALYSIS**

16  
17    **A.     Factual Background**

18  
19            On October 30, 2008, Paul McKim, the founder and CEO of Deep Marine  
20    Technologies, Inc. ("DMT"), filed a lawsuit in Harris County, Texas, alleging, among  
21    other things, that Nasser Kazeminy, an investor in DMT, had created a false consulting  
22    agreement with Hays Insurance, a Minnesota insurance brokerage, in order to funnel  
23    money to Senator Norm Coleman through his wife Laurie Coleman, a Hays employee  
24    See McKim Plaintiff's Original Petition ("Petition"), attached to the Complaint. The  
25    McKim Petition claims that Kazeminy told McKim and DMT's CFO that he wanted to

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1 "find a way to get money to United States Senator Norm Coleman of Minnesota and  
2 wanted to utilize DMT in the process," and that Kazeminy informed McKim that he  
3 "would make sure there was paperwork to make it appear as though the payments were  
4 made in connection with legitimate transactions the payments could be made to Hays  
5 for insurance " *Id* at 10-11 The McKim Petition alleges that Kazeminy arranged for  
6 Hays to draft a consulting agreement with DMT and coerced McKim into making three  
7 of four planned \$25,000 payments to Hays ostensibly in payment for services rendered,  
8 but McKim asserts that Hays performed no services for DMT and was not licensed to  
9 broker insurance in Texas *Id* at 11-12 A related shareholder's derivative suit was filed  
10 in the Delaware Chancery Court on November 3, 2008, making similar allegations  
11 Coleman and his wife are not defendants in either lawsuit, but Coleman has issued press  
12 releases to address the allegations, and he has hired attorneys to monitor the cases and to  
13 prepare to respond

14 Coleman's campaign asserted to the media that the allegations in the Kazeminy  
15 lawsuits were baseless and politically motivated Coleman's campaign manager Luke  
16 Friedrich reportedly stated that "[w]e intend to have any legal fees related to what we  
17 believe to be a politically inspired legal action to be covered by the senator's  
18 campaign We will be seeking the necessary approvals at the proper time to ensure that  
19 this is done in strict accordance with all appropriate laws and rules " See Tony Kennedy  
20 and Paul McEnroe, "Coleman Will Use Campaign Funds to Pay Legal Fees" on  
21 StarTribune.com, first published December 17, 2008, attached to the Complaint See also  
22 Dave Orrick, "FBI Reviewing Allegations Involving Norm Coleman Ally, Source Says,"  
23 on TwinCities.com, first published on December 19, 2008, attached to the Complaint

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1 Coleman and the Committee represented in their responses that no campaign  
2 funds have been spent on the legal fees related to the Kazeminy lawsuits Responses at 1  
3 Coleman wrote to the Commission seeking guidance as to whether he could spend  
4 campaign funds on the legal fees at issue, his request was circulated to the Commission  
5 on May 12, 2009, and is currently under consideration as Advisory Opinion Request  
6 ("AOR") 2009-12 (Coleman), scheduled for the June 25, 2009, Commission open  
7 session <sup>2</sup> Coleman has represented in AOR 2009-12 that he has hired the firm of Kelley  
8 & Wolter, a Minneapolis law firm, to represent him in the Kazeminy lawsuits, and that  
9 the firm has not yet been paid <sup>3</sup> See AOR at 1, fn 1 Coleman for Senate's disclosure  
10 reports to the Commission covering the period January 1, 2009, through March 31, 2009,  
11 disclose no disbursements to Kelley & Wolter

12 **B. Legal Analysis**

13 The Federal Election Campaign Act of 1971, as amended, ("the Act") provides  
14 that contributions accepted by a candidate may be used by the candidate for ordinary and  
15 necessary expenses incurred in connection with duties of the individual as a Federal  
16 office holder 2 U S C § 439a(a)(2) Such campaign funds, however, shall not be  
17 converted to "personal use" by any person 2 U S C § 439a(b)(1) "Personal use" is  
18 defined as the use of campaign funds of a present or former candidate "to fulfill any  
19 commitment, obligation or expense of a person that would exist irrespective of the

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<sup>2</sup> In addition to seeking Commission approval to spend campaign funds on legal fees related to the Kazeminy lawsuits, AOR 2009-12 seeks approval to spend campaign funds related to multiple complaints filed with the Senate Select Committee on Ethics and on media relations fees to address all of these matters

<sup>3</sup> News reports indicate that Laurie Coleman is being represented in the Kazeminy lawsuits by separate counsel from that representing her husband See Tony Kennedy and Paul McEnroe, "Coleman Will Use Campaign Funds to Pay Legal Fees" on StarTribune.com, first published December 17, 2008, attached to the Complaint The AOR does not request approval to use campaign funds to pay Laurie Coleman's legal fees related to these lawsuits

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1 candidate's election or individual duties as a holder of Federal office "

2 2 U S C § 439a(b)(2) The Act itemizes uses of campaign funds that are considered *per*  
3 *se* personal use, such as home mortgage, rent, or utility payments, clothing purchases,  
4 vacation or other noncampaign-related trips, household food items, and tuition payments  
5 *See id*

6 By contrast, the Commission will analyze on a case-by-case basis whether the use  
7 of campaign account funds for the payment of legal expenses constitutes personal use  
8 *See* 11 C F R § 113 1(g)(1)(u)(A) Expenses which the candidate can reasonably  
9 demonstrate result from campaign or officeholder duties will not be considered personal  
10 use *See* Final Rule and Explanation and Justification, Personal Use of Campaign Funds,  
11 60 Fed Reg 7862, 7867 (Feb 9, 1995) ("Personal Use E&J") The Commission has  
12 concluded that the use of campaign funds for legal fees and expenses does not constitute  
13 personal use when the legal proceedings involve allegations directly relating to the  
14 candidate's campaign or duties as a federal officeholder *See, e g* , Advisory Opinions  
15 2008-7 (Vitter) and 2006-35 (Kolbe) Legal fees and expenses, however, "will not be  
16 treated as though they are campaign or officeholder related merely because the  
17 underlying proceedings have some impact on the campaign or officeholder's status "  
18 Personal Use E&J at 7868 To demonstrate this distinction, the Commission noted that  
19 "legal expenses associated with a divorce or charge of driving while under the influence  
20 of alcohol will be treated as personal, rather than campaign or officeholder related " *Id* ,  
21 similarly, \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

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1 In response to the Complaint's allegation that Coleman's use of campaign funds  
2 for legal fees would constitute personal use and thus violate the Act, the responses  
3 emphasize that no campaign funds have been expended to pay for the legal services  
4 referenced in the complaint, and that Coleman and the Committee are "awaiting  
5 confirmation from the Commission that campaign funds may be used for such purposes "  
6 See Responses at 1, *see also* AOR 2009-12 (Coleman) The Committee's disclosure  
7 reports confirm that no campaign funds have been so spent as of March 31, 2009  
8 Therefore, at this time there appears to be no possible conversion of campaign funds to  
9 personal use in violation of 2 U S C § 439a(b)(1)

10 Based on the foregoing, we recommend that the Commission find no reason to  
11 believe that Norm Coleman, Coleman for Senate '08, and Rodney A. Axtell, in his  
12 official capacity as treasurer, violated 2 U S C § 439a(b) by converting campaign funds  
13 to personal use

14 **III. RECOMMENDATIONS**

- 15 1 Find no reason to believe that Norm Coleman, Coleman for Senate '08  
16 and Rodney A. Axtell, in his official capacity as treasurer, violated  
17 2 U S C § 439a(b)  
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19 2 Approve the attached Factual and Legal Analysis  
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21 3 Approve the appropriate letters  
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6/15/09  
Date

Thomasema P Duncan  
General Counsel

BY Stephen Gura  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

Mark Allen  
Mark Allen  
Assistant General Counsel

Andra Hale-Maddox  
Andra Hale-Maddox  
Attorney

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